THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :3591 of 2007

DATED:26-02-2007

BETWEEN:

T.L.Rambabu.

..... PETITIONER

AND

The Deputy Director,
Employees State Insurance Corporation,
5-9-23, Hill Fort Road,
Hyderabad.

.....RESPONDENT

ORDER:

Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

2. Petitioner seeks a writ of certiorari to call for the records relating to O.P.No.18 of 2002 on the file of the Principal Senior Civil Judge (Employees Insurance Court), Visakhapatnam to examine the circumstances in passing the order, dated
03-01-2007, in I.A.No.170 of 2005 to set aside the said order, in consequence thereof, direct the Principal Senior Civil Judge (Employees Insurance Court) Visakhapatnam to restore O.P.No.18 of 2002 and permit the petitioner to prosecute the same.

3. This Writ Petition has been filed through the power of attorney holder on behalf of the petitioner, namely T.L.Rambabu, who filed O.P.No.18 of 2002 on the file of the Principal Senior Civil Judge (Employees Insurance Court), Visakhapatnam, questioning the letter of the respondent, dated 22-07-2002, in demanding to pay a sum of Rs.1,38,961/- towards contribution of E.S.I. amount for thirteen employees from 01-12-1997 to 30-09-2001. Subsequently the aforesaid O.P. was dismissed for default on 02-09-2005 and the petitioner filed I.A.No170 of 2005 on the file of the Principal Senior Civil Judge, Visakhapatnam, on 29-09-2005 to set aside the order, dated 02-09-2005, and the said petition was allowed by order,dated 07-02-2006, in the following terms:

"On payment of costs of Rs.500/- to the

District Legal Services Authority and on a condition to file evidence affidavits and to cross-examine P.W.1 on 28-02-2006. Failing any of the conditions, petition stands dismissed".

On 28-02-2006 costs of Rs.500/- were paid but the petitioner has not filed any evidence affidavits, and on the other hand a memo has been filed under Section 148 CPC to extend the time upto 13-03-2006 for filing the petitioner's affidavit. Pursuant to the said memo, time was granted upto 13-03-2006 by order, dated 28-02-2006. On 13-03-2006 also the petitioner has not filed his evidence affidavit and he was not ready to fulfill the conditions imposed by order, dated 07-02-2006, by filing his evidence affidavit and to make available him for his cross-examination by the defendant. As the conditional order was not complied with the said I.A.No.170 of 2005 was dismissed for non-compliance of the conditions by order dated 13-03-2006. Thereafter, the petitioner filed I.A.No.104 of 2006 in O.P.No.18 of 2006 to restore the O.P. by setting aside the order, dated 13-03-2006, and the said I.A.No.104 of 2006 was allowed on 04-09-2006 by setting aside the order, dated 13-03-2006, and the petition was restored to file. Thereafter, the power of attorney holder of the petitioner filed I.A.No.105 of 2006 seeking permission to appear and conduct the case on behalf of the petitioner. As the petitioner was not ready to comply with the affidavit filed by the power of attorney holder the impugned order, dated 03-01-2007, in I.A.No.170 of 2005 has been passed stating that when the case has been posted for trial on 13-03-2006 as the petitioner has not complied with the conditional orders, dated 07-02-2006 and 28-02-2006, and as the I.A.No.170 of 2005 was dismissed for non-compliance of the order, the question of restoring the said O.P. on an application filed by the petitioner in

I.A.No.104 of 2006 does not arise and *in spite* of giving ample time to the petitioner to prosecute the O.P., by adducing evidence the affidavit filed by the power of attorney holder to restore the O.P. which was dismissed for non-compliance of the conditional order, dated 07-02-2006, by order of the Court below on 13-03-2006 the O.P.No.170 of 2005 already stands dismissed and therefore, the power of attorney holder cannot be permitted to prosecute the O.P., Aggrieved by the said order this Writ Petition has been filed.

4. I am of the opinion that the conditional order dated 07-02-2006 made in I.A.No.170 of 2005 admittedly has not been complied with and therefore, for non-compliance of the conditional order, dated 07-02-2006, the Insurance Court dismissed the O.P. itself on 13-03-2006. When the O.P. itself stands dismissed and as long as the order in I.A.No.170 of 2005 is not set aside the question of restoring the O.P. does not arise. The petitioner has not filed any petition or taken any steps for restoration of I.A.No.170 of 2005. The order in I.A.No.170 of 2005, dated 07-02-2006, resulting the dismissal of the O.P. itself has become final and therefore, I am of the opinion that the Court below rightly passed the impugned order dismissing the said I.A.No.170 of 2005, as it already stands dismissed. I see no merits in the Writ Petition.

5. Accordingly, the Writ Petition is dismissed. No order as to costs.

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V.ESWARAIAH,J

26th February, 2007.
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